

THE RURAL MUNICIPALITY OF WHITEMOUTH

BY-LAW NO. 607/13

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF WHITEMOUTH TO AUTHORIZE THE ENTERING INTO AND EXECUTION OF AN AGREEMENT WITH DUECK'S MECHANICAL.

WHEREAS Section 250(2) of Part 8, Division 1 of The Municipal Act provides in part as follows:

252(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (d) enter into an agreement with a person, with an agency of the Government of Manitoba or the Government of Canada, or with another municipality, including a municipality in another province, to do with or on behalf of the municipality anything the municipality has the power to do within the municipality;


AND WHEREAS it is deemed expedient and in the best interests of the residents of The Rural Municipality of Whitemouth that The Rural Municipality of Whitemouth enter into an agreement with Dueck's Mechanical;

AND WHEREAS the terms of the agreement have been settled and are contained in the Agreement attached hereto as Schedule "A";

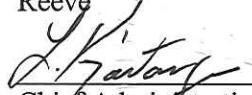
NOW THEREFORE BE IT AND IT IS HEREBY ENACTED that the Council of The Rural Municipality of Whitemouth, duly assembled, enact as follows:

1. **THAT** the entering into the proposed Agreement attached hereto as Schedule "A" is hereby approved and authorized.
2. **THAT** the Reeve and the Chief Administrative Officer of The Rural Municipality of Whitemouth are hereby authorized and instructed to execute the agreement, as set out in Schedule "A" attached hereto, for and on behalf of the Municipality.

DONE AND PASSED by the Council of The Rural Municipality of Whitemouth in regular session assembled, this 10th day of May, A.D., 2013.



Reeve



Chief Administrative Officer

Read a first time this 24th day of April, A.D., 2013
Read a second time this 10th day of May, A.D., 2013
Read a third time this 10th day of May, A.D., 2013

This Agreement made in duplicate this 21 day of MAY, 2013

BETWEEN:

THE RURAL MUNICIPALITY OF WHITEMOUTH
("Municipality")

-and-

DUECK'S MECHANICAL INC.
("Dueck's")

WHEREAS:

- A. Under the Municipal Act, the Municipality has the authority to enter into agreements and acquire and sell land for municipal purposes;
- B. The Municipality and Dueck's wish to provide for the Municipality to take a portion of land owned by Dueck's for the purpose of extending Wardrop Way. In return the Municipality will transfer to Dueck's a portion of Wardrop Way to be closed and consolidated with Municipal land Lot 1 Block 3 described in section 12. In addition Dueck's wishes to purchase land owned by the Municipality that is adjacent to the portion of Wardrop Way to be closed and to land owned by Dueck's;
- C. The parties wish to provide in this Agreement for the terms for the three transactions set out above.

THE MUNICIPALITY AND DUECK'S AGREE AS FOLLOWS:

The Municipality's purchase of land from Dueck's and the road opening

1. In consideration of payment of \$1.00 plus other good and valuable consideration, and on the terms and conditions set out in this Agreement, Dueck's agrees to sell, free and clear of all liens, charges and encumbrances, an approximately .96 acre portion from land owned by Dueck's legally described as:

CT No. 2189550/1

Parcel 1: Nly 104.5 feet of Wly 833 feet of SW ¼ 36-11-11 EPM Exc Plans 16186 and 27896 WLTO subject to the reservations and provisos contained in the grant from the Crown

Parcel 2: Parcel 3 Plan 3131 WLTO Exc Firstly: Road Plan 10642 WLTO and Secondly: Plan 27896 WLTO in NW ¼ 36-11-11 EPM;

The land required for the road opening and to be sold to the Municipality is shown outlined heavily in bold on the sketch attached as Schedule A to this Agreement ("Road opening land").

2. Dueck's acknowledges and agrees that the purchase price for the Road opening land:
 - a. represents the fair market value of and due compensation for the Road opening land, and
 - b. is in full payment and satisfaction for all estates and interests in the Road opening land and any and all loss or damage which may result to any person from any use made of the Road opening land in carrying out the Agreement.
3. Dueck's acknowledges and agrees that the Road opening land is vacant land and that the Municipality is purchasing it with no structures or improvements of any kind situated on, in, over, through, across or under it.
4. Dueck's acknowledges and agrees that the Municipality will either be registering a road opening plan, such other plan, or may include the road opening as part of the plan of subdivision being prepared for Dueck's land described in section 1 ("Road opening plan") and such other documentation in the Land Titles Office as may be required to open the Road opening land as a municipal road as contemplated by this Agreement.
5. Dueck's acknowledges that to be able to register the Road opening plan, the Municipality will require the consent of every person with a registered interest in the Road opening land, and, an acknowledgement from each that their interest in the Road opening land will cease upon registration of the Road opening plan and that they accept the sum of \$1.00 as

compensation in full. Dueck's agrees to assist the Municipality as may be reasonably required to obtain the consents, and to provide and/or execute such further and other conveyances, applications, documents and evidence as may be required to give effect to this Agreement and effect the registration of the Road opening plan.

6. The effective date of the sale and purchase of the Road opening land, the date on which Dueck's shall deliver vacant possession of the Road opening land to the Municipality, and the date all adjustments of taxes and any local improvement levies and other adjustments are to be made, shall be the date of the completion of the registration at the Land Titles Office of the Road opening plan and such other documentation as may be required to open the Road opening land as a municipal road.
7. Upon execution of this Agreement, Dueck's grants the Municipality and its agents, together with such machinery, materials and equipment as may be required, the right of access to the Road opening land, and over and across the Road opening land, as may be required to inspect, survey, drill or undertake and perform such actions and all other works as may be contemplated by this Agreement. The Municipality agrees to indemnify and save harmless Dueck's from any and all losses, damages, expenses, claims whatsoever arising from or out of the Municipality exercising its rights under this section.
8. The Municipality may file a caveat against the Road opening land evidencing this Agreement. Upon filing a caveat, a copy of this Agreement shall be attached to the caveat.
9. Dueck's agrees not to convey, dispose of, or encumber the Road opening land in any manner whatsoever except subject to this Agreement.
10. If for any reason outside of the Municipality's control the Municipality is unable to register the Road opening plan by the 31st day of December, 2015, the Municipality and Dueck's agree that the sale of the Road opening land and the sale of the Wardrop Way land described in this Agreement shall be null and void unless there is an agreement in writing between them to the contrary. In which case the sale of the Municipal land Lot 1 Block 3 described in section 12 shall continue as set out in this Agreement excepting any title consolidation with the Wardrop Way land.
11. Dueck's does not have or accept any responsibility or liability whatsoever for the condition of the Road opening land, including its fitness for the purpose of constructing any structure, or any occupation or use of the Road opening land.

The sale of the Municipality's land to Dueck's

12. In consideration of payment of \$10,000.00 plus other good and valuable consideration ("purchase price"), and on the terms and conditions set out in this Agreement, the Municipality agrees to sell, free and clear of all liens, charges and encumbrances except Registration Nos. 164841/1 and 4061881/1, the land legally described as:

CT No. 2504060/1
Lot 1 Block 3 Plan 50832 WLTO
In SW ¼ 36-11-11 EPM ("Municipality's land")
13. Dueck's is a registrant under the Excise Tax Act and shall be a registrant at the time the purchase price is payable. Dueck's registration number is 897929261RT001. Dueck's undertakes to self-assess and report the purchase and be liable for all GST resulting from the purchase, including any interest and penalties. Dueck's shall indemnify and save the Municipality harmless from any and all liability which the Municipality may incur as a consequence of the Municipality agreeing to close the purchase of the Municipality's Land without collecting the GST from Dueck's at the time of the purchase.
14. Vacant possession of the Municipality's land will be given, payment of the purchase price, and all adjustments of taxes and any local improvement levies and other adjustments are to be made, effective as of 12:00 a.m. on the earlier of the 31st of December, 2013 or such other date and/or time as is mutually agreeable to the Municipality and Dueck's ("possession date"). Title to the Municipality's land shall be transferred to Dueck's on the possession date. Consolidation of the Municipality's land and the Wardrop Way land described in section 18 shall be completed after the Road closing plan is registered in the Land Titles Office.
15. The Municipality does not have or accept any responsibility or liability whatsoever for the condition of the Municipality's land, including its fitness for the purpose of constructing any structure, or any occupation or use of the Municipality's land.

16. Dueck's may start development of the Municipality's land any time after the possession date. No rent shall be payable by Dueck's in respect of such possession. Dueck's shall be responsible to pay the taxes for the Municipality's land effective the possession date. As municipal services to the Municipality's land are coming off of Elevator Road, any local improvement levies created for the Industrial Park or Wardrop Way shall not apply to Lot 1 Block 3.
17. The Municipality agrees not to convey, dispose of, or encumber the Municipality's land in any manner whatsoever except subject to this Agreement.

The road closing and sale of land to Dueck's

18. In consideration of payment of \$1.00 plus other good and valuable consideration, and on the terms and conditions set out in this Agreement, the Municipality agrees to sell, free and clear of all liens, charges and encumbrances, an approximately 3.1 acre portion of Wardrop Way to Dueck's as shown outlined heavily in bold on the sketch attached as Schedule A to this Agreement ("Wardrop Way land").
19. Dueck's is a registrant under the Excise Tax Act and shall be a registrant at the time the purchase price is payable. Dueck's registration number is 897929261RT001. Dueck's undertakes to self-assess and report the purchase and be liable for all GST resulting from the purchase, including any interest and penalties. Dueck's shall indemnify and save the Municipality harmless from any and all liability which the Municipality may incur as a consequence of the Municipality agreeing to close the purchase of the Municipality's Land without collecting the GST from Dueck's at the time of the purchase.
20. The Wardrop Way land shall be consolidated with the Municipality's land described in section 12.
21. Dueck's acknowledges and agrees that the Municipality will either be registering a road closing plan, or such other plan ("Road closing plan") and such other documentation in the Land Titles Office as may be required to transfer the Wardrop Way land to Dueck's as contemplated by this Agreement.
22. Dueck's acknowledges that to be able to register the Road closing plan, the Municipality will require the consent of every person with a registered interest in the Municipality's land and Dueck's land. Dueck's agrees to assist the Municipality as may be reasonably required to obtain the consents, and to provide and/or execute such further and other conveyances, applications, documents and evidence as may be required to give effect to this Agreement and effect the registration of the Road closing plan.
23. The effective date of the sale and purchase of the Road closing land and the date on which the Municipality shall deliver vacant possession of the Road closing land to Dueck's shall be the date of the completion of the registration at the Land Titles Office of the Road closing plan and such other documentation as may be required to effect the transfer of the Road closing land to Dueck's; provided however that, in the event that, for whatever reason, the Road closing plan is not registered, the Municipality and Dueck's agree that the sale of the Wardrop Way land shall be null and void unless there is an agreement in writing between them to the contrary. In which case the sale of the Municipal land Lot 1 Block 3 described in section 12 shall continue as set out in this Agreement excepting title consolidation with the Wardrop Way land.
24. Upon execution of this Agreement, the Municipality grants Dueck's and its agents, together with such machinery, materials and equipment as may be required, the right of access to the Wardrop Way land, and over and across the Wardrop Way land, as may be required to inspect, survey, drill or undertake and perform such actions and all other works as may be contemplated by this Agreement.
25. The sale of the Wardrop Way land is conditional upon the Municipality passing a road closing by-law, obtaining approval for the road closing under the Municipal Act on terms satisfactory to the Municipality, and the registration of the Road closing plan. If the Road closing plan is not registered before the 31st day of December, 2015, this portion of the agreement relating to this land is null and void (without effecting the other portions of this agreement).

Costs

- 26. The parties agree as follows respecting the costs for the transactions contemplated by this Agreement:
 - a. Road opening land: the parties to share equally in the survey costs for the plan required for the Road opening land. The parties are otherwise responsible for their own costs.
 - b. Municipality's land: the parties to be responsible for their own costs
 - c. Wardrop Way land: the Municipality to be responsible for the costs for the road closing. Dueck's to be responsible for the costs of obtaining any consents related to Dueck's Land that may be required to complete the road closing.

General

- 27. The parties agree to, with due diligence and as soon as reasonably possible, do all things necessary to obtain the approvals, consents, and take the actions required to complete the transactions contemplated by this Agreement. If the Road opening plan and the Road closing plan are not registered in the Land Titles Office by December 31, 2014 then the sale of the Road opening land and the Road closing land shall be null and void unless there is agreement in writing between the parties to the contrary. In which case the sale of the Municipal land Lot 1 Block 3 described in section 12 shall continue as set out in this Agreement excepting title consolidation with the Wardrop Way land.
- 28. This Agreement binds the Municipality and Dueck's, their successors in title and assigns, and shall enure to their respective benefit.
- 29. The party benefited by a condition may waive fulfilment of that condition, provided that such party does so in writing before the end of the time within which such condition is to be fulfilled. If the benefited party does not so waive and give notice of fulfilment with respect to such condition, then such condition will be deemed to be not fulfilled.
- 30. The Municipality and Dueck's each authorize each other to pay and deliver to each other, and their respective solicitors to pay and deliver to the parties' respective solicitors, any money or documents due in connection with this Agreement and for so doing, this will be their full and sufficient authority.
- 31. This Agreement contains all of the promises, agreements, representations, warranties and terms between the parties relating to the transaction contemplated by it, and
 - a. anything not included in writing in this Agreement is of no force or effect, and
 - b. any amendments made to this Agreement will have no force or effect unless in writing and signed by both parties.
- 32. Time is of the essence of this Agreement.
- 33. The preamble forms part of this Agreement.

IN WITNESS WHEREOF the Municipality and Dueck's have executed this Agreement as of the date first above written.

THE RURAL MUNICIPALITY OF WHITEMOUTH



Reeve



Chief Administrative Officer

DUECK'S MECHANICAL INC.

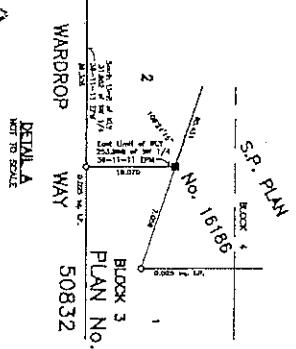
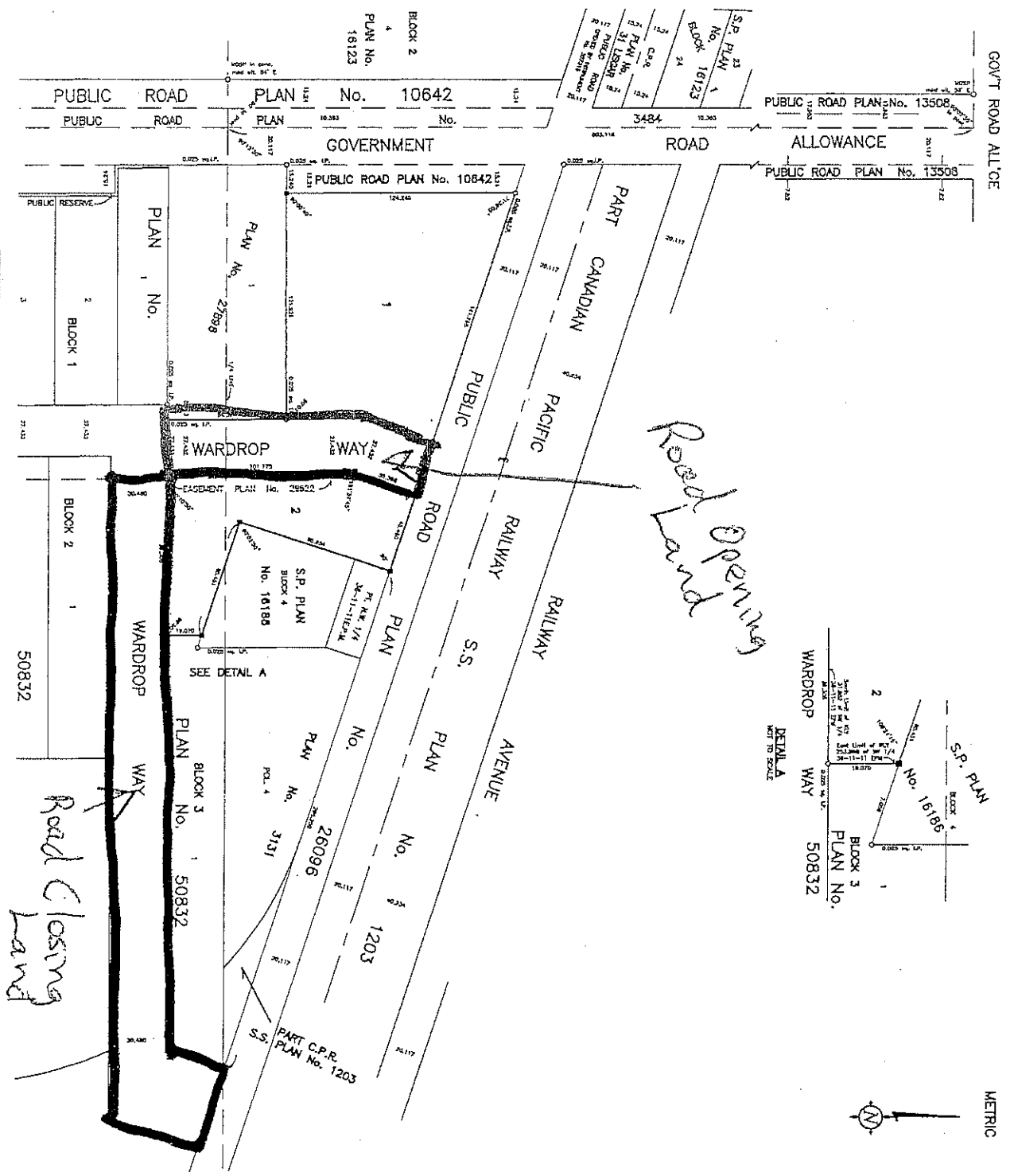




Witness

SCHEDULE A TO AN AGREEMENT BETWEEN THE RURAL MUNICIPALITY OF WHITEMOUTH and DUECK'S MECHANICAL INC.

Copy of Survey



PLAN OF SUBDIVISION
OF PART OF
West 1/2, Section 36, Township 11, Range 11 E.P.M.
INCLUDING
Part Parcel 3, Plan No. 3131
and part of Plan No. 29622

RURAL MUNICIPALITY OF WHITEMOUTH
MANITOBA

SCALE 1 : 1000



NOTES
ALL DIMENSIONS ARE IN METERS AND MAY BE CONVERTED TO FEET BY MULTIPLYING BY 3.2808.
STAKED DIMENSIONS FOUND ON THE GROUND ARE DESCRIBED AND SHOWN THIS _____
FOR PARTS DIMENSIONS FOUND ON THE GROUND ARE DESCRIBED AND SHOWN THIS _____
FOR PARTS DIMENSIONS FOUND ON THE GROUND ARE DESCRIBED AND SHOWN THIS _____
ALL DIMENSIONS REFERRED TO ARE OF RECORD IN THE MANITOBA LAND TITLES OFFICE.

AFFIDAVIT
I, SHERIDAN THOMPSON, CLERK OF THE CITY OF WINNIPEG, MANITOBA, LAND SURVEYOR, HAVE EXAMINED THE SURVEY AND FOUND THAT THE DIMENSIONS AND DESCRIPTIONS OF THE LANDS SHOWN ON THIS PLAN ARE CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.
WITNESSED MY HAND AND THE SEAL OF THE CITY OF WINNIPEG, MANITOBA, THIS 15th DAY OF JANUARY, 2013.
SHERIDAN THOMPSON
LAND SURVEYOR

OWNERS
APPROVED BY PLANNING COMMISSIONER OF WINNIPEG
THIS _____ DAY OF _____ 20____
FOR REGISTRATION
RE-APPROVED THIS _____ DAY OF _____ 20____
FOR REGISTRATION

APPROVALS
APPROVED BY PLANNING COMMISSIONER OF WINNIPEG
THIS _____ DAY OF _____ 20____
FOR REGISTRATION
RE-APPROVED THIS _____ DAY OF _____ 20____
FOR REGISTRATION

DEFENSE AND RESTRICTIONS IN THE
MANITOBAN LAND TITLES OFFICE THIS _____ DAY OF _____ 20____
AS PLAN NO. _____ 20____
FOR REGISTRATION
DEFENSE AND RESTRICTIONS IN THE
MANITOBAN LAND TITLES OFFICE THIS _____ DAY OF _____ 20____
AS PLAN NO. _____ 20____
FOR REGISTRATION

